IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 947 OF 2006

Bayer Cropscience Limited]
(Formerly M/s Bayer (India)]
Ltd.), A Company incorporated
under the Indian Companies]
Act, 1956 having registered]
office at Bayer House,]
Hiranaadani Gardens, Pawai]
Mumbai,400 076 and Factory]
at Kolshet Road, Thane.] Petitioner

Vs.

1. Ms. Sampada S. Shetye]
2/63, Tulsi Bldg, 178,]
Khetwadi Back Road]
Mumbai 400 004.]
]

2. Shri Thakre,]
Presiding Officer,]
3rd Labour Court Bombay,]
having its office at]
Administrative Bldg.,]
Ground Floor, Bandra(East)]
Mumbai - 400 051.]Respondents

Mr. K. M. Naik - a/w R. N. Salgaonkar & Mr. Gaonkar i/b Salgaonkar & Co. for petitioner.

Mr. G. S. Kulkarni for the Respondent.

CORAM : S.U. KAMDAR, J.
DATE : APRIL 10, 2006.

ORAL JUDGMENT :-

. Rule returnable forthwith.

2. Heard parties. The impugned order, which is challenged in the present petition is passed by the Labour court in a reference, preferred by the respondent no.1 workman. By the said impugned order, it is held that

resignation of the respondent No.1 was obtained by force and thus, the resignation is invalid. Secondly, it is held that there is an illegal termination of services of the respondent no.1 with effect from 27th September, 1995. The Labour Court has also directed reinstatement of the respondent no.1 with full back wages and continuity of service.

3. Some of the material facts are as under:-

. Respondent no.1 was an employee of the petitioner company and was working as telephone operator cum receptionist. On 27th September, 1985 when the respondent reported on the duty, she punched the attendance card of Miss Cnynthia Misquitta at about 8.47 a.m. It is the case of the respondent no.1 that since the attendance card of Ms. Cynthia Misquitta was adjacent to her card she punched the same by mistake, thinking that it is her card. However, it is the case of the petitioner that it has been observed from some time that the attendance card of Ms. Cynthia Misquitta has been deliberately punched, by somebody to mark

her attendance, even though she has remained absent, and therefore, an observation was kept on the persons punching the cards. It is the case of the petitioner that the respondent no.1 was caught red handed and since she was caught red handed, she tendered her resignation from her services, immediately on the same day i.e. 27.9.1985. It is further case of the petitioner that the said resignation was accepted by the company on the very same day. After submission of resignation to the petitioner, respondent has contended after few days that the said resignation was obtained by force and contended that the petitioners should be treated in continuity of the service. In view of the fact that petitioners did not accept the said contention, the petitioner moved the Labour Court by filing a Reference (IDA) No. 48 of 1997 contending that resignation has been obtained by force .

4. On perusal of the record, it is evident that only ground which has been taken in support of the so called forced resignation was that the respondent was in the cabin of one Mr. Apte, Personal Officer alone and said Mr. Apte

obtained her resignation by force. It has been further contended that a circumstantial evidence of the case indicate that the respondent who was steno-typist has given hand written resignation, and if it was voluntary, then she would have typed out the resignation and would not have handed in hand written resignation. On the basis of the aforesaid two grounds the learned Labour Court has come to the conclusion that the said resignation is a forced resignation. It has been further stated in the impugned order that Mr. Apte and the respondent were in the cabin and there is an assumption that Mr. Apte threatened her to resign and hand written resignation has been obtained.

5. In so far as back-wages are concerned, though it is an admitted position on record that the respondent was working with one Kalpak Development Corporation with the salary of Rs. 4,500/- per month. The Labour Court has held that it is not proved that respondent no.1 was earning sufficiently and therefore, he has granted her back-wages and continuity of service.

6. In my opinion, the impugned order is totally perverse. For the purpose of determination whether resignation is obtained by force, the only evidence which has been relied upon is resignation is hand written and that the respondent no.1 was with the Labour Officer in his cabin. There is no material whatsoever produced to show that in fact any force was used by any person and that the said resignation was obtained under any duress or force. The person who is alleging force, and duress is first require to plead such a case with all details and thereafter the same is required to be proved with material evidence. The fact that the person is stenographer and still she has given hand written resignation, in my opinion does not mean that resignation is taken by force. The fact that the petitioner punched the card of Ms. Cynthia Misquitta is not disputed but it is only claimed that it was by mistake. I am also of the further opinion that merely because she resigned in the cabin of Mr. Apte, Personal Officer, does not establish any force or duress in giving her resignation. Furthermore, the finding of the

gainful employment is also totally perverse. The Labour Court has ignored the admission of the respondent,without giving any cognate reasons, in respect thereof. There is no material whatsoever on record to believe that resignation was obtained by force. In my opinion, the order passed by the Labour court is totally perverse and based on no material or evidence. Even the finding on the gainful employment is also baseless and contrary to the admission of the respondent no.1 herein. Thus, in my view the order passed by the Labour Court being the order dated 14th December, 2005 is unsustainable in law and accordingly the same is quashed and set aside. The Reference (IDA) No. 48 of 1997 is dismissed. Petition is made absolute accordingly. However, there shall be no order as to costs.

[S. U. Kamdar, J.]